

**REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF PLATTSBURGH, NEW YORK**

April 11, 2013

5:30 P.M.

MINUTES

Present: Mayor Donald Kasprzak, Councilors Tim Carpenter (W1), Mark Tiffer (W2), George Rabideau (W3), Jim Calnon (W4), Chris Case (W5), Chris Jackson (W6)

Absent: None

1. MINUTES OF THE PREVIOUS MEETING:

RESOLVED: That the Minutes of the regular meeting of the Common Council held on March 27, 2013 are approved and placed on file among the public records of the City Clerk's Office.

By Councilor Carpenter; Seconded by Councilor Jackson

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

2. PAYROLLS OF VARIOUS DEPARTMENTS:

RESOLVED: That the payrolls of the various Departments of the City of Plattsburgh for the week ending April 10, 2013 in the amount of \$ 246,237.27 are authorized and allowed and the Mayor and the City Clerk are hereby empowered and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Calnon; Seconded by Councilor Carpenter

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

3. REPORTS OF CITY OFFICES & COMMITTEE REPORTS:

- Report of Fire and Ambulance Responses for the week of March 28 – April 10, 2013
- Report from the Building Inspector's Office March 21 – April 2, 2013
- Statements of cash receipts from the Library from March 14 - March 20, 2013

RESOLVED: That the reports as listed are hereby ordered, received and placed on file among the public records of the City Clerk's Office.

By Councilor Carpenter; Seconded by Councilor Tiffer

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

4. CORRESPONDENCE & RECOMMENDATIONS FROM BOARDS: None

5. AUDIT OF CLAIMS:

RESOLVED: That the bills Audited by the Common Council in the amount of \$ 980,366.67 are authorized and allowed and the Mayor and City Clerk (where required) are hereby authorized and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor Rabideau; Seconded by Councilor Carpenter
Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

6. PERSONS ADDRESSING COUNCIL:

Andrew Golt 17 Couch Street said I approached the Council 2 weeks ago with the dog issue. My dog and I were attacked by a Pit Bull which I should refer to as a strong biting dog because we don't want to discriminate against dog breed. Any of the Councilors interested in helping us prepare a new law that the City of Troy and the Town of Chesterfield have? I would like to reinforce the law in the City. My wife spoke with Mr. Clute and I think he is waiting for us to do something. Which we can do but my plate is full. I work day and night to better my apartments, pat myself on the back. Any Councilors want to help us with this? Anybody interested in taking a tougher stand against people that keep these dogs as weapons? They're kept as weapons. They're bred maybe for cigarette money. There's a lot of people that don't have jobs, don't have any insurance, don't have any equity, nothing really to lose except maybe a bit of time in jail.

Mayor Kasprzak said you are going to get a comment from me that you are not going to like. After a review of some of the laws that Carol had mentioned and John's research and John mentioning the New York State Ag's and markets laws associated with this issue. I can't speak for the Council, but I think there is somewhat of a feeling that our laws are as strong as they can be. There's no debate here tonight. I shouldn't have said that but I felt that you deserved that answer.

Andrew Golt 17 Couch Street said but you weren't on your hands and knees with a vicious dog that wouldn't let go watching my dog get killed. I just need the Councilors to really hear it and really feel it.

Mayor Kasprzak said they hear it. You've made your point several times.

Andrew Golt 17 Couch Street said why has Troy and Town of Chesterfield adopted much stricter laws.

Mayor Kasprzak said this is not a debate. There is no point in me having you come every week and you get frustrated and you want things to happen when in fact I probably shouldn't have said anything to you but I thought you deserved that answer that was my perspective. I appreciate you coming.

Andrew Golt 17 Couch Street said I'd like to have some progress and maybe the Councilors will contact us.

Councilor Calnon said if I may just because we did not have anyone in attendance at our Public Safety Committee meeting last week. The Public Safety Committee did consider the issue did review basic tenants of Ag and Markets that John shared. And we felt at the time that there was not a need for us to create a new law. So it's not something that we've ignored. We think that the Ag and Markets law serves us well. So the

Public Safety Committee did not forward a recommendation to the legislation of the full Council.

Andrew Golt 17 Couch Street said that's what I needed to hear that we've got to lobby them and maybe makes some progress. As I mentioned these people are not keeping these as pets. They may call them pets but they're keeping them as weapons.

Carol Klepper 17 Couch Street said haven't had a lot of time to research, but, the Town of Chesterfield and Clifton Park John and I spoke and we agree that I don't think that anything they have is going to better improve what we have in the books. I want to step out for a minute. We went to court today on the out of control of owner leash law that the City of Plattsburgh had on the books. Because I don't want to reinvent the wheel and I don't want to waste the City Councilor's time we are all busy not only us but all of you. What I am proposing is that we have something on the books more enforceable for the out of control. When it came in front of the judge today he didn't even give a lecture to the people that keep opening up their door and letting their 5 dogs go out. I called in another complaint because they attacked another dog 2 weeks later. If we had a progressive one on the books and we could start with that I think it would be a step towards working toward something that could be more enforceable. One of the problems is the New York State statute of law there is an interpretation about provoked or unprovoked. But in this case another dog or human doesn't have to be killed, I would hope, to have something on the books that could be enforced. And now when I speak to the police they say well there is no prior incidents of this dog hurting somebody else. There's no prior incidents of a dog or a human being attacked or killed. We want city residents to be able to walk their dogs without any fear and that's all I'm trying to ask the council. I will work with somebody we don't have to rewrite the whole thing. But could we start with the out of control law we have on the books. I'd like an answer.

Mayor Kasprzak said you're not going to get an answer tonight and I don't know if you are going to get the answer you want.

Carol Klepper 17 Couch Street said I'd like to at least work with somebody or the Council to put something that we can enforce because people that moved in down the street also are creating a hazard now and I want to prevent another incident. I've made copies Paul Babbie who had an incident that the city's quite aware of where his dog and he were attacked several years ago wrote a letter to the Council asking them to revisit this.[Mr. Babbie's letter submitted in to the minutes].[Carol also submitted other documents supporting her opinion in to the minutes].

7. OTHER ITEMS:

A. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2013-10 "Vacuum Street Sweeper" be awarded to Cyncon Equipment Inc. for the lump sum price of \$198,700.

By Councilor Jackson; Seconded by Councilor Case

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

B. RESOLVED: In accordance with the request therefore the Common Council approves a Change Order #4 to PMLD #2011-7-1 "115kV Relay Testing" at a cost of \$16,607.39.

By Councilor Jackson; Seconded by Councilor Case

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

C. RESOLVED: In accordance with the request therefore the Common Council approves the Champlain Wine Company located at 8 City Hall Place to use one parking space in front of their establishment for outdoor dining seating. The owners will contact Concrete Supply or similar and are prepared to purchase concrete barriers. The City is asked to permit the licensee to use concrete barricades with the City installing and removing at the beginning and end of the season. The City will be reimbursed for these services and the cost shall be determined by the Department of Public Works. The requested dates are from May 1, 2013– September 30, 2013.

By Councilor Case; Seconded by Councilor Tiffer

Discussion:

Councilor Rabideau said I'm going to make my comments in reference to all of the street requests for parking because we have more than one here and there's no use mentioning it on each one of them. My objections in the past were in reference to having a restaurant in a public parking space and I continue to object to that. Especially on a major route that goes right down City Hall Place. Today I went and checked and looked at the parking spaces on City Hall. Unless I'm wrong I counted 6 spots on that side of the street where Irises is between the corner and the cross walk over here. One of them specifically on number "E" where it says Irises are requesting spaces it doesn't say how many spaces there requesting. But it says between 20-22 City Hall Place. However, there are only 6 spots to begin with and there's also the wine store and the Green Pepper. I'm not against restaurants on the sidewalks, sidewalk dining. But if it continues like this we're not going to have places for people who are senior citizens or people who have trouble walking long distances or people who have trouble walking period. To be able to get out of their car and the answer isn't go park down by the boat dock or go park in the city parking lot and walk up the hill. That's the purpose of public parking spaces is for people to be able to park and not for a restaurant to be in that particular public parking space. I'm definitely against each one of these applications for using public parking spaces.

Councilor Tiffer said this is a practice that's done throughout the US. This isn't an isolated just Plattsburgh does this. This is something that in major cities they do it. In streets that have much more traffic than Margaret Street, multi-lane streets. I don't agree with the way that we do it, I mean concrete barriers, and I've said this throughout the years. But it seems like that's the only solution that's cost effective that's feasible at this time. And if you were to talk to these restaurant owners it brings people to the restaurant. People drive by they see it. They like to sit outside. We don't have a very long summer so it has that opportunity to sit outside to enjoy yourself outside and eat. It's

something that really helps there business. And that's the reason why we do it. If it wasn't good for their business, if losing those parking spots wasn't good for them they wouldn't do it. You wouldn't have 4 requests to have outdoor seating. The limited amount of space on the sidewalk it doesn't accommodate for tables and chairs and to allow ADA capabilities to walk through on the sidewalk. So this is the reason why we have been forced on to the road. I wish there was a better solution but I have to support it.

Councilor Carpenter said George would you be happier with the Irises if we were to determine the number of spots that they want and just put that in there tonight? Want to give them 2, give them 4? Instead of leaving it open.

Councilor Rabideau said no. I'm against the...

Councilor Carpenter said cause you had mentioned that there was no...

Councilor Rabideau said there some applying for one spot. All I'm doing is calling attention to the fact that Irises you don't know how many spots they're applying for. I think they had some spots and I was told in the past that this number of spots increased on City Hall Place from when they first approved those amount of spots.

Councilor Carpenter said which is why I'm asking you if you'd like to put a number of spots down there so they can tell how many they can have instead.

Councilor Rabideau said I'm against parking in the public spots.

Councilor Carpenter said I had a second comment. When we do something here at this table and there are people in the city that don't like it, I don't know about the rest of you guys, but I hear about it. People tell me. Everywhere I go people say, Tim, what are you guys doing you know why are you doing that? And there might be a legitimate reason and there might not but it gives me a chance to explain to them. I've never heard from anyone to complain about the use of these parking spots down there. And when they set them up all summer long you drive by and there's always people sitting at the tables hanging out there. So to me with no one complaining and a lot of people using it I think it's a positive thing so I'll be supporting it.

Councilor Rabideau said I'd just like to add you say all these people. I drive by there and see on a rainy day there's nobody sitting there. On a cold a breezy day there's nobody sitting there. So my objection is you're taking public parking spaces away from the public. And especially people who are senior citizens who have a hard time to walk long distances and so forth. That's my objection. I'll leave it at that I said enough earlier.

Councilor Calnon said I want to talk about the expansion of the sites. I mean Irises is asking for 16-24 City Hall Place. But Irises is listed as 20 and Delish is listed as 24. So we're picking up a couple on the other side.

Councilor Jackson said when we get to that resolution I would like to adjust this. Actually, we're going to have resolution C when we get to E I do have comments and I would like to offer an

adjustment to it.

Councilor Calnon said as long as we're on the topic of all of these we may as well as George points out talk about all of them at once that's why I thought it was an issue.

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(Councilors Carpenter, Tiffer, Calnon, Case and Jackson vote in the affirmative. Councilor Rabideau votes in the negative.

ACTION TAKEN: Adopted

Follow up Action: None

D. RESOLVED: In accordance with the request therefore the Common Council approves The Pepper located at 13 City Hall Place to use two parking spaces in front of their establishment for outdoor dining seating. The owners will contact Concrete Supply or similar and are prepared to purchase concrete barriers. The City is asked to permit the licensee to use concrete barricades with the City installing and removing at the beginning and end of the season. The City will be reimbursed for these services and the cost shall be determined by the Department of Public Works. The requested dates are from May 1, 2013– September 30, 2013.

By Councilor Case; Seconded by Councilor Carpenter

Discussion:

Councilor Jackson said I want to do this one too because I went down and looked at it myself. There asking for 2 spaces and if you go down and look at how their building is set up and where the parking spaces are there might be 4. I want to make sure the parking spots they use are the one directly in front of their building and the one to the north. Because I'd like a parking spot in front of Meschinelli's in front of the Shoe Hospital. So the 2 spots are fine it's the one in front of them and the one in front of the parking lot to the north.

Mayor Kasprzak said I'm not sure if you want to put this in an amendment or if you just want to email me and I'll make sure it happens with Public Works.

Councilor Jackson said we can do it that way.

Mayor Kasprzak said why don't you email me and we will contact them and I assume everybody doesn't have a problem with it.

Department of Public Works Superintendent Mike Brodi said there are some issues with safety and positioning of the barriers. You can't just put 2 barriers in front of the parking area you have to have a barrier slanted to deflect any vehicle that may be out of control. So it may be more than just the 2 parking spaces. So you have to look at the set up. That's something we've got to look at. You can't just leave the barriers with open ends.

Councilor Jackson said I totally get you and I know what you're saying Mike and I think the barriers should be contained within the spaces they're requesting and not go beyond those.

Department of Public Works Superintendent Mike Brodi said there was an issue with that they didn't have enough room for their tables and stuff they had to expand.

Mayor Kasprzak said they're thick the barriers are thick.

Department of Public Works Superintendent Mike Brodi said it's just the spacing between the tables.

Corporation Council John Clute said the other problem is too the way the parking spaces get laid out. You know they don't line up exactly with the restaurant.

Councilor Jackson said I know that's one of my points.

Corporation Council John Clute said I know at one point we were requiring actual diagrams of where these things were in relation to the spaces and the buildings.

Councilor Carpenter said maybe we should consider tabling this and ask for a little more research. When someone asks for 2 parking spots I'm voting that they can use 2 not 4. Everything's going to be contained in the 2 parking spots they have. If they don't have enough room for tables then they need to request 3 parking spots. If they request 2 and we say yeah we can use 2 we certainly don't want to infringe upon 4. 2 plus the 2 on the end because then we lose 4 parking spots. We're allowing them to use 2 not 4. I would think those barriers have to be within the parking spots that they're requesting. As opposed to encroaching upon what they're not requesting. And if there's not enough room for them then they need to request for 1 more parking spot.

Councilor Jackson said I don't think it's enough room between the sidewalk and the curb. They want 4 tables and they can only fit 3. I think it's the space between the tables that they're giving their objection to Mike.

Councilor Carpenter said so they probably want 3 parking spots so they have room to put the tables as opposed to 2. What I'm saying is that if I'm voting to give them 2 parking spots that's what I want to give them. I don't want to lose 4 parking spots so they can't encroach on the ones that they haven't requested for they've got to put everything in those spots that they've asked for.

Councilor Jackson said that's exactly how I feel. I agree.

Councilor Tiffer said I feel like this is worth noting. This is no different than last year. This is exactly what it was like last year. In fact Irises was exactly the same because in front of Irises there was no parking. There was one parking spot from the end of Delish all the way over there was only one parking spot that entire stretch.

Councilor Jackson said and I don't think it was right for AES. I don't think it was right for the other businesses on that street that it went beyond the property lines of their store front.

Councilor Tiffer said sure, but, I just wanted to say there not expanding anyway this year. This is

exactly how it was last year.

Councilor Jackson said I know and I didn't like it last summer and that's why I wanted to make sure when it came up this summer that it was 3 spaces. I'd like to make a motion to table this.

Mayor Kasprzak said so we are going to let the one above it continue and we're going to table the next 3?

Councilor Jackson said the reason being and I can tell you why because if you look at how that parking space is laid out. It's one parking space and it has the diagonal so it's not impacted the way that these are. I went down and looked at it and there's only one parking spot and it already has the diagonals so.

Mayor Kasprzak said so if we're going to do this spring is coming and it's time sensitive for these peoples businesses. Would you like then to be scheduled to come in and either talk to the committee next week or do you want them here in 2 weeks. I would strongly suggest out of fairness because then Mike Brodi's schedule has to be considered with people working to put the barriers in from the 25th to May 1st. So let's have this discussion.

Councilor Carpenter said I say let's vote on what they've requested for 2 parking spots and they get 2 and if that's not enough ask them to come back with a request to add another parking spot. But they've already requested 2 parking spots. Give them 2 but in my opinion 2 parking spots.

Mayor Kasprzak said I think the issue is and Mike can maybe help me with this. The barriers are very thick and whether we like it or not, and Mark made a good point that this has been going on for several years, the barriers are not thin enough physically to lay right on the edges of the 2 parking spaces and they can get there allotted tables in there. Mike is that a fair thing to say.

Department of Public Works Superintendent Mike Brodi said that's correct Mayor.

Mayor Kasprzak said so if you are all telling me that eventually you all are going to state that you only physically have 2 parking spots. I mean if that's what the majority want to do that's fine. I'm telling you that won't be as profitable. It will probably hurt business as it has been successful over the last several years with this. But if that's what you want then a majority of you will direct us to do that, that is fine. When do you want to do this?

Councilor Jackson said Mike I have a question for you. If, every one of these is for May 1st you're not going to do this before May 1st?

Department of Public Works Superintendent Mike Brodi said usually around May 1st.

Councilor Jackson said and today's the 11th so there's another City Council meeting on the 25th.

Mayor Kasprzak said so do you want these folks to come in?

Councilor Tiffer said what is next week's committee?

Councilor Calnon said Community Relations.

Councilor Tiffer said it doesn't hurt for them to come in to speak.

Corporation Council John Clute said maybe we ought to delegate this decision to whomever attends next week's meeting and just be done with it. So that it's done in time. This isn't like we're deeding over the city street it's a license or something like that. You usually have at least 3 people and let's just leave it up to that committee.

Mayor Kasprzak said what I'll do John is this I agree with Mark. So I'll have The Pepper folks, Irises. I'll contact them.

Corporation Council John Clute said you know there are a lot of things that go to these parking things. When you have people coming out of blind alleys, sometimes the parking spaces aren't directly following the building lines there kind of angled a little bit. If you're going to go through this next week my suggestion would be let's try and get all the facts and diagrams and photographs and just deal with them all at once. So that everybody's treated the same on these things. Whatever standards adopted I'm not sure what you're going to come up with.

Mayor Kasprzak said so we are going to table the next 2 and then I will have people here next week.

Councilor Case said Mike when you have to put the safety barriers up does that take up an extra parking space?

Department of Public Works Superintendent Mike Brodi said that might be part of the problem.

Councilor Case said so 2 actually become 4?

Department of Public Works Superintendent Mike Brodi said yes.

Motion to table resolutions D and E:

By Councilor Jackson; Seconded by Councilor Carpenter

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Tabled

Follow up Action: None

E. RESOLVED: In accordance with the request therefore the Common Council approves Irises Café & Wine Bar located at 20-22 City Hall Place to use the parking spaces in front of 16-24 City Hall Place (Irises Café Wine Bar and DeLish by Irises) for outdoor dining seating. The owners would like to use the concrete barriers as in past years. The City is asked to permit the licensee to use concrete barricades with the City installing and removing at the beginning and end of the season. The

City will be reimbursed for these services and the cost shall be determined by the Department of Public Works. The requested dates are from May 1, 2013– September 30, 2013.

Motion to table resolutions D and E (per discussion under D):

By Councilor Jackson; Seconded by Councilor Carpenter

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Tabled

Follow up Action: None

E2. RESOLVED: In accordance with the request therefore the Common Council approves the American Cancer Society to hold an event in Trinity Park on May 22, 2013 from 4pm – 7pm.

By Councilor Tiffer; Seconded by Councilor Case

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

F. RESOLVED: In accordance with the request therefore the Common Council approves that Project HOME 2009-23 (Parrotte – 36 Olivetti Place) be awarded to Handy Dan D Home Improvement in the total amount of \$16,300.

By Councilor Rabideau; Seconded by Councilor Case

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

G. RESOLVED: In accordance with the request therefore the Common Council approves Ian Bellerive from PHS National Honor Society to hold a “1000 Mile Skate Kickoff/Fundraiser” to raise awareness and funds for cancer research on Sunday May 12, 2013 on US Oval from 8am-12pm.

By Councilor Calnon; Seconded by Councilor Carpenter

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

H. RESOLVED: In accordance with the request therefore the Common Council approves Patricia Dimon to hold the CancerBGone 5k Splash, a Zumbathon at the City Recreation Center and a one

mile race on US Oval to benefit the Fitzpatrick Cancer Center on August 10, 2013. Runners for the 5k Splash will run from the Terry Gordon Bike Path to the City Beach using Bridge St, City Hall Place, Cumberland Ave, Margaret Street and the Heritage Trail.

Motion to table resolution H:

By Councilor Case; Seconded by Councilor Jackson

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Tabled

Follow up Action: None

I. RESOLVED: In accordance with the request therefore the Common Council approves Jack Barrette to hold the Battle of Plattsburgh Commemoration Cannonball Run on US Oval and the Terry Gordon Bike Path on Saturday September 14, 2013 from 8am-11am.

By Councilor Tiffer; Seconded by Councilor Jackson

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

J. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2011-12 "Instrumentation-WPCP" be extended with Total Control System Service, Inc for the total amount of \$50,000

By Councilor Jackson; Seconded by Councilor Carpenter

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

K. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2012-07 "Hauling of Sludge for WPCP" be extended with Drummac Septic for the total amount of \$156,090.

By Councilor Jackson; Seconded by Councilor Calnon

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

L. RESOLVED: In accordance with the request therefore the Common Council approves Contract # 2012-12 "Electrical Services for WPCP/City" be extended with Triangle Electrical Systems, Inc. for the total amount of \$122,000.

By Councilor Calnon; Seconded by Councilor Jackson

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

M. RESOLVED: In accordance with the request therefore the Common Council approves Julie Miller to hold a Zumba/Turbo Kick fundraiser to benefit Sara Tromblee at the City Recreation Center on Sunday June 30, 2013 from 1:30-4:30.

By Councilor Tiffer; Seconded by Councilor Carpenter

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

N. RESOLVED: In accordance with the request therefore the Common Council approves the Municipal Lighting Department to write-off unpaid final bills from January 1, 2012 to January 31, 2012, approximating \$4,907.76. The percentage of write-offs for this period is .24%.

By Councilor Jackson; Seconded by Councilor Rabideau

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

O. RESOLVED: That the Common Council agrees to and authorizes an April 8, 2013 proposal from CHA for Value Engineering and Alternative Design Analysis for Mead Dam as outlined in an April 8, 2013 memorandum from the Environmental Manager. The cost is hourly not to exceed a total of \$9,900. The source of funds is the Mead Dam Capital Project.

By Councilor Jackson; Seconded by Councilor Carpenter

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

P. RESOLVED: In accordance with the request from Olive Ridley's, the Common Council authorizes the use of two parking spaces in front of Olive Ridley's for outdoor seating between May 11 and October 1, 2013, subject to established City Policy and Public Works schedule.

Motion to table:

By Councilor Jackson; Seconded by Councilor Carpenter

Discussion:

Councilor Carpenter said the dates are different than the other 3 so Mike would it be better for your department if all of them were done on the same day?

Department of Public Works Superintendent Mike Brodi said we try to do that.

Councilor Carpenter said I'd kind of like us to when we bring it back we set the dates the same as the other 3 places. Because there all on May 1st this one's May 11th so we can all get them done the same time.

Mayor Kasprzak said would you like them to come too?

Councilor Jackson said yeah that's what John said treat them all the same.

Councilor Tiffer said so people don't feel we are singling out a certain business it's everybody that is utilizing.

Councilor Carpenter said and the end date it's like a day earlier the 30th the others.

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative. Councilor Rabideau qualified his vote "On the table, Yes.")

ACTION TAKEN: Tabled

Follow up Action: None

Q. Introduced: Local Law No 1 of 2013: Amending in its entirety City Code Section 257-15 C and setting water service rates and enacting regulations for levy and collection of water charges.

By Councilor Case

Public Hearing Date set by Mayor: April 25, 2013 at 5pm in the Common Council Chambers, City Hall, 41 City Hall Place, Plattsburgh, NY 12901

R. RESOLVED: In accordance with the recommendation of Kevin Farrington, City Engineer, that Luck Bros, Inc. be allowed to withdraw their bid on Contract 2013-04 "Boynton Avenue Improvements" without forfeiture of the bid bond and that the contract be awarded to the next lowest responsible bidder: Steven E. Fuller Excavating, Inc.

By Councilor Jackson; Seconded by Councilor Tiffer

Discussion:

Councilor Carpenter said Kevin how much more is that going to be is it a huge difference?

City Engineer Kevin Farrington said about \$67,000.

Councilor Carpenter said and the total cost of the bid?

City Engineer Kevin Farrington said the low bid with Luck's was \$201,000 and the Fuller's is \$267,000. It was in the bid tab you should have a bid tab.

Councilor Carpenter said yeah I've been so busy with all that other stuff I didn't get a chance to look for it and you were here so I figured I'd give you a chance to speak.

City Engineer Kevin Farrington said no problem.

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

S. Motion to waive rule 4 for initial consideration "Request from Arthur Menard to hold a Run for Reading on the Terry Gordon Bike Path to benefit the Literacy Volunteers of Clinton County on Saturday June 15, 2013 from 8:00 am to noon," "Resolved: that the Common Council agrees to and authorizes an April 8, 2013 proposal from CHA for the inspection and monitoring plan for Mead Dam as outlined in an April 8, 2013 memorandum from the Environmental Engineer. The cost is hourly not to exceed a total of \$18,250. The source of funds is the Mead Dam Capital Project."

By Councilor Jackson; Seconded by Councilor Tiffer

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

RESOLVED: In accordance with the request therefore the Common Council approves Arthur Menard to hold a Run for Reading on the Terry Gordon Bike Path to benefit the Literacy Volunteers of Clinton County on Saturday June 15, 2013 from 8:00 am to noon.

By Councilor Tiffer; Seconded by Councilor Carpenter

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson
(All voted in the affirmative)

ACTION TAKEN: Adopted

RESOLVED: that the Common Council agrees to and authorizes an April 8, 2013 proposal from CHA for the inspection and monitoring plan for Mead Dam as outlined in an April 8, 2013

memorandum from the Environmental Engineer. The cost is hourly not to exceed a total of \$18,250. The source of funds is the Mead Dam Capital Project.

By Councilor Jackson; Seconded by Councilor Calnon

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

8. TRAVEL REQUEST:

A. RESOLVED: In accordance with the request therefore the Common Council approves Bill Treacy Manager MLD to attend the "NYMPA 16th Annual Meeting in East Syracuse, NY from May 14 -15, 2013 at an estimated cost not to exceed \$329.

By Councilor Jackson; Seconded by Councilor Rabideau

Discussion: None

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

ACTION TAKEN: Adopted

Follow up Action: None

9. RESOLUTIONS FOR INITIAL CONSIDERATION:

1. Request from the City Chamberlain to revise capital project H3410.36 2011 Public Service Building Improvements based on the request from the Superintendent of Public Works to reallocate a portion of the cost for lighting improvements to provide for furnace repairs at the public works facility.
2. Request from Arthur Menard to hold a Run for Reading on the Terry Gordon Bike Path to benefit the Literacy Volunteers of Clinton County on Saturday June 15, 2013 from 8:00 am to noon. **(Move to Agenda under "Other Items" Letter S)**
3. Resolved: that the Common Council agrees to and authorizes an April 8, 2013 proposal from CHA for the inspection and monitoring plan for Mead Dam as outlined in an April 8, 2013 memorandum from the Environmental Engineer. The cost is hourly not to exceed a total of \$18,250. The source of funds is the Mead Dam Capital Project. **(Move to Agenda under "Other Items" Letter S)**

10. NEW BUSINESS: None

Motion to Adjourn by Councilor Jackson; Seconded by Councilor Tiffer

Roll call: Councilors Carpenter, Tiffer, Rabideau, Calnon, Case, Jackson

(All voted in the affirmative)

MEETING ADJOURNED: 6:22pm

4/9/2013

To whom it may concern:

Due to my work schedule I am unable to attend, but would like this statement read into the minutes.

In May of 2007 while my wife and I were taking a walk with our dog to Stewarts. He was leashed. We were across the street walking in a grassed area, when our dog Ginseng was suddenly attacked by 4 pit bull dogs. 2 of the dogs had not been on leashes and the 2 on leashes were not under control. The apartment where the dogs lived did not have a fenced in area to contain the dogs and the person there just opened the door to let them run. He later testified in court that it was his practice to let the dogs run loose at night to go to a field across the street and he also told the court that the reason only 2 of the dogs were leashed was because he only owned 2 leashes.

During the attack my dog suffered many injuries. His neck was slashed, ears and head bitten, both front legs bitten and punctured, chest was bitten and his rear left hind quarter had 2 large, deep puncture wounds that required stitches. I believed that my dog was going to be killed and in the process of trying to save my dog's life my right hand was bitten. After finally getting the dogs off of my dog, he ran off. Our neighbor's son who witnessed the attack followed him to our house and watched him while I had to receive treatment in the Emergency room for the dog bites on my hand. After getting out of the hospital, I then had to take my dog to the vet for emergency treatment for his wounds. He was never the same after that and passed away less than 2 years later on 4/19/09.

So then I had to pay vet bills, emergency room bills, my glasses were also destroyed in the attack and had to be replaced and I missed time at work. My wife, who witnessed the attack was also traumatized. After the attack, it was determined that one of the dogs did not have its rabies shots and had to be put down to be tested. I also had to wait a week to find out if I would have to go through treatment for Rabies, not the most pleasant time.

What happened to the dog owner, nothing. A warning from the court to "not let it happen again." No fines for leash law violation. I have never held the dogs responsible for their actions, it was the owner who was and is responsible. I sent him a notarized letter with copies of the bills and he refused delivery, I started to receive phone calls at all hours from an untraceable number, a 222 area code. This stopped when I went to the police and had them call the number. I went to the court to try and get the bills paid and ended up having to go to the Sheriff and pay to have him served.

The City of Plattsburgh offers little or no protection for its people from dangerous dogs and worse, irresponsible dog owners. A noise complaint gets better action and steeper fines and penalties. Even a landlord with raccoons' tenets can be held responsible and fined. But if his tenets have out of control dogs, nothing. We had our dog for more than 12 years and he never





GAME DOG

TROY

User Name Password
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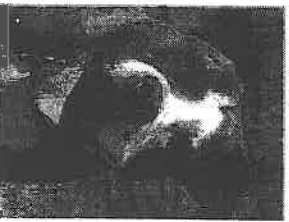
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#1

 **Judy**
Choice Member

Join Date: Aug 2005
 Location: MA
 Posts: 1,424
 Images: 6



Troy NY-Tough New Dangerous Dog Law

Their message is loud and clear in Troy - control your dangerous dogs or they will be put to death.

The Troy City Council passed a tough new ordinance that cracks down on what lawmakers call "irresponsible" dog owners.

The updated law comes after a series of dog attacks in

Dogs of the Month

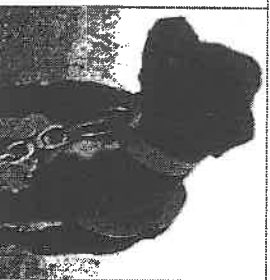
March, 2013

Male of the Month



WNK's Pablo

Female of the Month



the city that injured a number of other animals and even one child.

One Troy family almost lost their pet after a routine walk through Knickerbocker Park in Lansingburgh last week. Tammy Gregoire and her 8-year-old daughter Molly say their King Charles Spaniel "Henry" is lucky to be alive after an unleashed dog, similar to a Husky, pounced on Henry.

"I picked him up in my arms and the dog just jumped right up and ripped him out of my arms," Tammy said.

"Right after he jumped up and was shaking my dog with his teeth and I was crying really sad because I thought he was going to kill my dog," said 8-year-old Molly.

Justin Hines, who was walking in the area at the time of the attack, rescued Henry.

"I just ran as fast as I could to see what I could do for a dog and get it off of Henry," Justin said.

It is the latest in a string of attacks on family pets and children - vicious encounters the city is trying to stop. And the council says they are not prepared to watch anyone else get hurt because of a vicious animal.

Under the updated ordinance, the penalty for any person violating the "dangerous dogs" ordinance will be punished by a mandatory fine of no less than five-hundred dollars, and no more than one-thousand dollars, and/or a minimum of 30-days in jail.

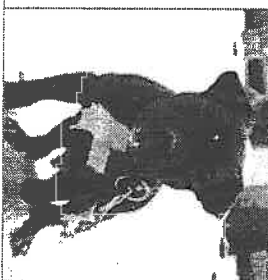
It also states that any dog that attacks a human being or another dog "shall" be destroyed. The previous law used the phrase "may be destroyed."

All cases will still go before a judge who will make the final ruling on whether a dog should be euthanized.

"Not every Pit Bull is a bad dog, not every Rottweiler is

Roza's Cosmoa

Puppy of the Month



The III's Bare Knuckles

Upcoming Events

Chipley, FL: Conformation & Weight Pull by Sunshine State APBTC
Mar 30, 2013

Chipley, FL: Conformation & Weight Pull by Sunshine State APBTC
Mar 31, 2013

Waynesville, NC: 3 ADBSI Shows, 2 Weight Pulls by Palmetto State APBTC
Apr 20, 2013

Waynesville, NC: 3 ADBSI Shows, 2 Weight Pulls by Palmetto State APBTC
Apr 21, 2013

Lancaster, MA: Fun Conformation Show & All Breed Weight Pull by New England APBTC
May 4, 2013

Newest Replies

CH Golden king's King (8xw, 1x1)

Last Post By hammer head (58 replies)
Today, 03:37 PM in Dog Discussion

a bad dog, they can be bred to be friendly or to be fighters," says Troy Mayor Harry Tutunjian. "This law will protect people from dogs who have been classified as dangerous or hurt a child or another pet."

<http://www.wten.com/Global/story.asp?S=4867624&nav=6uyN>

bsl workshop

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hunting and/ or work?

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Chapter 124. ANIMALS

[HISTORY: Adopted by the City Council of the City of Troy 3-1-1973 as Ch. 6 of the 1973 Code. Amendments noted where applicable.]

Article I. Farm Animals and Snakes

§ 124-1. Horses, cattle, sheep or swine running at large prohibited.

A. It shall be unlawful for any horses, cattle, sheep or swine to run or be at large in any part of the City, or for any person to suffer or permit any horses, cattle, sheep or swine, owned or possessed by him or of which he shall have charge, to run or be at large in any part of the City.

B. Any member of the police force of the City shall take and seize any such animal found running or being at large in any part of the City, and place the same in any livery stable, or other proper place, for the keeping of such animal, and the person in whose custody such animal is so placed shall have a lien upon such animal for the care thereof, which shall be enforced as provided for the enforcement of liens on animals, by the Lien Law of the State of New York.

C. Any person violating the provisions of Subsection A shall be guilty of a misdemeanor.

§ 124-2. Snakes.

[Added 2-3-1992]

Any person owning, possessing or harboring a snake, whether poisonous or nonpoisonous, who fails to exercise due care in safeguarding the public from bodily harm from said snake, has created a public nuisance and a threat to public safety. A person owning, possessing or harboring a snake shall be considered not exercising due care unless the snake appearing in public is properly caged to avoid bodily harm. Any person failing to properly cage a snake shall be in violation of this section and be subject to the penalties as outlined in § 124-18.

Article II. Dogs

§ 124-3. Short title.

This article shall be known as the "Dog Control Ordinance."

§ 124-4. Definitions.

For the purposes of this article, the following definitions shall apply:

ANIMAL CONTROL OFFICER

A person or persons appointed by the City for the purpose of enforcing this article, and for the purposes of this article, such animal control officer is deemed to be a peace officer.

[Amended 10-2-2003 by L.L. No. 4-2003]

AT LARGE

A dog shall be deemed to be at large if it is elsewhere than on the premises of the owner while not in the control of the owner or the owner's agent and without the knowledge, consent or approval of the owner of such lands.

[Amended 10-2-2003 by L.L. No. 4-2003]

DELINQUENT/DELINQUENCY

Dog owner does not renew existing dog license on or before the due date, or did not license dog at four months of age as required by Article 7 of the Agriculture and Markets Law of New York State § 121.

[Added 7-8-2010 by Ord. No. 5]

DOG or DOGS

Both male and female dogs, except where the context requires otherwise.

DOG PARKS

A fenced-in area within a City-owned property designated and approved for dog exercise where dogs are allowed off leash while under the supervision of their owner(s). Owners are subject to all New York State Agriculture and Markets Law and all municipal rules and regulations that govern the ownership of such animal. Fencing is to be installed to meet the standards of dog park fencing throughout New York State, under the guidelines of the American Kennel Club.

[Added 8-6-2009 by Ord. No. 4]

LEASHED or RESTRAINED BY A LEASH

That the dog is equipped with a collar or harness to which is attached a leash, both collar or harness, and the leash to be of sufficient strength to restrain the dog, and which leash shall be held by a person having the ability to control and restrain the dog by means of the collar or harness and the leash.

OWNER

Includes any person who owns, keeps, harbors, or has the care, custody or control of a dog. Dogs owned by minors shall be deemed to be in the custody and control of the minor's parents or other head of the household where the minor resides.

§ 124-5. Purpose and intent.

[Amended 8-6-2009 by Ord. No. 4]

The purpose and intent of this article shall be to preserve the public peace and good order of the City and to contribute to the public welfare and the preservation and protection of the property and the person of the inhabitants of the City by declaring and enforcing certain regulations and restrictions on activities of dogs and owners of dogs within the City. Further, it is the purpose and intent of the Troy City Council to advance the promotion of dog parks within City parks. Although the Code currently prohibits dogs in City parks, many residents allow their dogs to run, unleashed, in Troy City parks. This type of situation causes unsafe conditions for dogs and humans alike.

§ 124-6. All dogs to be leashed.

[Amended 8-6-2009 by Ord. No. 4]

All dogs in the City are hereby required to be restrained by a leash while off the owner's premises, whether such dogs are or are not tagged or licensed; provided, however, that dogs are permitted to be unleashed while off the owner's premises when on the premises of another person with such other person's consent, and no person who owns, keeps, harbors or has the care, custody or control of any dog in the City shall permit such dog to be at large or unleashed in the City except as permitted by this article. This section shall not apply to dogs that are within a dog park that has been designated a dog park area by § 124-22, entitled "Designated dog parks."

§ 124-7. Howling dogs.

No person shall keep or harbor a dog which howls or barks habitually or continuously so as to disturb the peace and quiet of other persons.

§ 124-8. Female dogs.

Any female dog shall be confined to the premises of the owner while such female dog is in season.

§ 124-9. Dangerous dogs.

[Amended 9-3-1987; 3-3-1988; 7-1-1993; 12-5-2002 by Ord. No. 4; 1-2-2003 by Ord. No. 7; 10-2-2003 by L.L. No. 4-2003; 5-4-2006 by Ord. No. 1]

A. Definition. As used in this section, "dangerous dogs" shall mean and include:

- (1) Any dog with known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or animals; or
- (2) Any dog which attacks, threatens or endangers a human being or animal without provocation; or
- (3) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

B. Dangerous dogs.

- (1) No person owning or harboring or having the care or custody of a dangerous dog shall suffer or permit such dog to go unconfined on the premises of such person. Under this section a dangerous dog is unconfined if such a dog is not securely confined indoors or confined in a securely enclosed and locked pen or a dog run area upon the premises of said person. Such pen or dog run area must also have either sides six feet high or a secure top. If the pen or structure has no bottom secured to the sides, the sides must be imbedded into the ground no less than one foot.
- (2) No person owning or harboring or having the care of a dangerous dog shall suffer or permit such dog to go beyond the premises of such person unless such dog is securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length.

(3) No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging said dog to unprovoked attacks upon human beings or domestic animals.

(4) No person shall possess with the intent to sell, offer for sale, breed or buy or attempt to buy within the City any dangerous dog.

(5) Any person owning, harboring, or having the care or custody of a dangerous dog shall display a sign on his/her premises warning that there is a dangerous dog on the premises. Said sign shall be visible and capable of being read from the public right-of-way.

(6) Any person owning, harboring or having care or custody of a dangerous dog shall provide liability insurance in the amount of at least \$100,000 covering any damages or injury caused by such dangerous dog.

(7) Registration. The City Clerk or his/her designee shall require the owner of a dangerous dog to register such dog with the City Clerk. The application for such registration shall contain the name and address of the owner, the breed, age, sex, color and any other identifying marks of the dog, the location where the dog is kept if not the address of the owner and any other information which the City Clerk or his/her designee shall require. The application for registration pursuant to this subsection shall be accompanied by a registration fee of \$30. Each dog registered pursuant hereto shall be assigned an official registration number by the City Clerk. Such registration number shall be tattooed at the owner's expense in the manner prescribed by the City Clerk. The certificate of registration shall be of such form and design and shall contain such information as the City Clerk shall prescribe and shall be issued to the owner upon payment of the registration fee and presentment of sufficient evidence that the owner has complied with all the orders of the City Clerk as prescribed at the determination hearing.

C. Enforcement. In the event a law enforcement officer has probable cause to believe that a dangerous dog is being harbored or cared for in violation of Subsection B, the law enforcement agent may petition a court of competent jurisdiction to order the seizure and impoundment of the dangerous dog pending trial. In the event that a law enforcement officer has probable cause to believe that a dangerous dog is being harbored or housed in violation of Subsection B(2) and (3), the law enforcement officer may seize and impound the dangerous dog pending trial.

D. Penalty.

(1) Any person violating this section shall be punished by a mandatory fine. Said fine shall be set at no less than \$500 and no more than \$1,000 and/or a minimum of 30 days in jail. Each separate offense shall constitute an additional violation.

(2) Any dangerous dog which attacks a human being or animal shall may be ordered destroyed.

(3) Any person found guilty of violating this section shall pay:

(a) All expenses, including shelter, food and veterinary expenses necessitated by the seizure of any dog for the protection of the public;

(b) All veterinary and medical expenses incurred by victims of such an attack; and

(c) Such other expenses as may be required for the destruction of such dog.

(4) Any person who is convicted under this section will be permanently precluded, at the discretion of the Troy Police Department and the Troy Animal Control Officer, from owning, possessing or harboring any other dog within City limits. All violators shall be subject to the penalties expressed in this section.

§ 124-10. Property damage.

The owner of a dog shall not permit such dog, even though leashed, to do any of the following acts:

A. Enter public buildings, restaurants, stores or cemeteries, except seeing eye dogs, hearing dogs, service dogs, war dogs or police work dogs properly trained, when such dogs are actually being used by persons for the purpose of aiding them;

[Amended 10-2-2003 by L.L. No. 4-2003]

B. Damage or deface property not belonging to the owner of the dog;

C. Deposit waste or commit a nuisance on the private property of a person or party other than that of the owner of the dog.

§ 124-11. Potentially rabid dogs.

A. The Animal Control Officer or any peace officer is hereby authorized to seize or direct the confinement of any dog which is reported to have attacked or injured a human being. Any such dog shall be confined by the owner for such length of time as may be necessary for the purpose of determining whether such a dog is affected by rabies and, if so affected, it may be destroyed.

B. The owner of such a dog shall upon demand deliver the possession of such dog to the Animal Control Officer, or any officer authorized to seize the same, and shall upon demand pay to the City the cost of confinement and treatment of the dog.

§ 124-12. Untagged dogs.

Any peace officer or the Animal Control Officer of the City shall seize any dog found at large not wearing the license tag required by Article 7 of the Agriculture and Markets Law of the state.

§ 124-13. Seizure of dogs.

[Amended 12-5-1991; 7-7-1994; 5-3-2001 by Ord. No. 7; 10-2-2003 by L.L. No. 4-2003; 7-8-2010 by Ord. No. 5]

Per Article 7 of the Agriculture and Markets Law of New York State § 117 Seizure of dogs; redemption periods; impoundment fees; adoption:

A. Any animal control or police officer of the City shall seize any dog which is found at large in violation of § 124-6, or which is found at large and is in violation of §§ 124-7 through 124-10 at the time when so found at large.

B. After complaint and hearing, the police court judge of the City may direct any dog owner who is in violation of §§ 124-6, 124-7, 124-8, 124-9, 124-10 and 124-11 to dispose of the offending dog outside the City, or, if the dog is not in the custody of the City, to deliver the same to the Animal Control Officer for humane destruction.

C. Every dog so seized shall be properly fed and cared for at the expense of the City until disposition thereof, as herein provided, and in accordance with the applicable provisions of the Agriculture and Markets Law of the State of New York.

D. If a dog is seized for a violation of § 124-6 only, and the dog is wearing a license tag, the animal control or police officer shall ascertain the owner of the dog and shall give immediate notice to the owner, or an adult member of his family, with a notice in writing stating that the dog has been seized and will be destroyed or offered for adoption unless redeemed as herein provided.

E. Redemption fees. Any dog seized for any violation of this chapter or Article 7 of the Agriculture and Markets Law may be redeemed by the owner at the place of impoundment within seven days for licensed dogs and five for unlicensed dogs by producing a valid license, proof of ownership, court deposition if applicable and paying the required redemption fees, impoundment fees, delinquency fees, court fees and any other fees required.

(1) Redemption fee:

(a) For the first impoundment of any dog owned by that person: \$50.

(b) For the second impoundment within one year of the first impoundment of any dog owned by that person: \$75 for the first 24 hours or part thereof and \$10 for each additional 24 hours or part thereof; or

(c) For the third and subsequent impoundment within one year of the first impoundment of any dog owned by that person: \$100 for the first 24 hours or part thereof and \$20 for each additional 24 hours or part thereof.

(2) Impoundment fee. Dog owners of seized dogs must pay an impoundment fee of \$350 per dog (base fee) plus \$50 per day for each additional day starting with Day Six from the date of seizure. Per Article 7 of the Agriculture and Markets Law of New York State § 117.

(3) Delinquency fee. If a dog is seized and the dog is not licensed or dog license has expired, there will be an additional fee of \$100 at the time of licensing. Per Article 7 of the Agriculture and Markets Law of New York State § 117.

F. Forfeiture of title; disposition of unredeemed dogs. If an owner is entitled to redeem a dog pursuant to Subsection E above, and if not so redeemed, the owner shall forfeit all title to the dog and the dog shall be sold, offered for adoption or caused to be destroyed. In the case of sale, the purchaser must pay the purchase price to the facility impounding the dog and, if the dog is not licensed, obtain a license for such dog.

§ 124-14. Jurisdiction.

The Judge of the Police Court of the City shall have jurisdiction to hear all complaints under this article, and of all actions and proceedings hereunder, and of all prosecutions for the violation of this article.

§ 124-15. Enforcement.

It shall be the duty of the Animal Control Officer to enforce the provisions of this article and to seize all dogs found at large in violation of this article or which are ordered seized by a Judge of the Police Court of the City.

§ 124-16. Who may file a complaint and what it shall contain.

Any person who observes or has knowledge of a dog causing damage or destruction to property of a person other than its owner, or violating any section of this article, or committing a nuisance upon the premises of a person other than its owner, may file a signed complaint under oath with the Clerk's office of the Police Court of the City, specifying the objectionable conduct of the dog, the date thereof, the damage caused, a description of the dog, and name and residence, if known, of the owner or other person harboring such dog.

§ 124-17. Authority of Chief Complaint Clerk.

Upon receipt by the Clerk of the Police Court of any complaint against the conduct of any particular dog, the Clerk may summon the alleged owner or other person harboring such dog to appear in person before him/her; if the summons is disregarded, the Clerk may permit the filing of an information and issue a warrant for the arrest of such person.

§ 124-18. Penalties for offenses.

[Amended 9-3-1987; 12-5-2002 by Ord. No. 4; 1-2-2003 by Ord. No. 7; 10-7-2010 by Ord. No. 10]

Any person who violates or knowingly permits the violation of any section of this article, other than § 124-9, shall be deemed to have committed an offense against this article and subject to a mandatory fine of \$100 or imprisonment for not more than 25 days. Each separate offense shall constitute a separate additional violation, subject to a mandatory fine of \$100 plus an additional incremental fine of \$50 for each separate additional violation. This section shall not apply to violations of § 124-9, which provides for penalties therein.

§ 124-19. Local fees and licensing requirements.

[Amended 4-20-1982; 6-7-1984; 10-7-2010 by Ord. No. 10]

With the elimination of New York State Agriculture and Markets dog licensing functions, as of January 1, 2011, it will be the responsibility of municipalities to conduct dog license procedures. Local governments are required to establish local fees and policies prior to January 1, 2011, via legislation. This ordinance amends Chapter 124, § 124-19 of the City Code to read as follows:

A. The City Clerk's Office will issue two different types of dog tags:

- (1) Regular license for altered and unaltered dogs; and
- (2) Exempt license for guide and service dogs.

B. Exemptions will be allowed for:

- (1) Guide or service dogs will be exempt from licensing fees as mandated by § 110 of the New York State Agriculture and Markets Law.

(2) Dog shows. Dogs will be exempt from wearing license tags during the period of dog shows conducted within the City limits of Troy.

(3) Senior citizens, living within the City limits of Troy, will pay reduced licensing fees for their dog(s) as provided for below.

C. In the absence of licensing fees formerly prescribed by New York State Article 7 § 110 of the Agriculture and Markets Law, the annual "local" fee for each dog license issued in the City of

Troy shall be:

(1) For each spayed or neutered dog: \$15 (\$1 applied to New York State Animal Population Control Fund surcharge).

(2) For each unspayed or unneutered dog: \$20 (\$3 applied to New York State Animal Population Control Fund surcharge).

(3) Senior citizens: \$7.50 (\$1 for altered applied to New York State Animal Population Control Fund surcharge and \$3 for unaltered applied to New York State Animal Population Control Fund surcharge).

D. The City of Troy maintains the thirty-day licensing exemption for out-of-state dogs.

E. Dog license requirements. When licensing a dog in the City of Troy, the dog owner must provide:

(1) Proof of dog ownership, i.e., bill of sale from a licensed animal company, or veterinary records documenting the owner's address;

(2) Valid New York State driver's license or nondriver's license ID;

(3) A notarized "Landlord Permission Form" must be submitted at the time of licensing if the dog owner is not the property owner where said dog is domiciled.

F. The licensing municipality must provide dog control and shelter services under the New York State Agriculture and Markets Law. All monies collected, less the deduction for the New York State Animal Population Control Fund as provided for above and related to dog licensing procedures, will be placed in an account established for expenses incurred by the City of Troy.

G. All shelters and/or veterinary clinics under contract with the City of Troy must:

(1) Ensure a dog license has been issued by the Troy City Clerk's office as of January 1, 2011, prior to such dog being released from their facility into the City limits of Troy;

(2) Pursuant to §§ 117-a and 377-a of the New York State Agriculture and Markets Law:

(a) No animal shelter, dog control officer or humane society organization may release a dog or cat for adoption unless the dog or cat has been spayed or neutered.

(b) Exceptions shall be made if:

[1] The veterinarian certifies the spay/neuter procedure would endanger the life of the animal.

[2] The dog owner provides proof that the dog has a recent breed ring show record or has completed registry requirements for the title of champion or its equivalent.

§ 124-20. Cleanup of waste.

[Amended 7-6-2000 by Ord. No. 13]

The owner of a dog, whether said dog is tagged or not tagged or licensed, shall be responsible for removing and cleaning any waste or excrement deposited by said dog upon public or private property not belonging to the owner of the dog. All such waste and excrement shall be removed and cleaned by placement in a plastic or metal bag or container and thereafter discarded in the same manner as garbage and refuse are to be discarded. Said bag or container shall be conspicuously displayed or carried in plain view at all times while walking or exercising said dog. This section shall not apply to those individuals considered legally blind.

§ 124-21. Number of dogs.

[Added 12-5-2002 by Ord. No. 4; amended 1-2-2003 by Ord. No. 7]

A. No person or persons shall own, harbor or keep more than three dogs which are more than four months of age in any premises containing three or fewer dwelling units, or more than one dog more than four months of age in any dwelling unit in a premises containing four or more dwelling units, except in pet shops, veterinary hospitals and kennels established in accordance with the Zoning Ordinance. *Editor's Note: See Ch. 285, Zoning.*

B. This section shall not apply to dogs licensed before December 31, 2002, and harbored at a single dwelling unit or premises; provided, however, that this exemption shall apply only to such licensed dogs and only so long as they remain properly licensed, and this exemption shall not allow for replacement of or addition to any such dogs until such time as the replacement or addition will not raise the total number of dogs at a dwelling unit or premises to a number which is in violation of this section.

C. Nothing in this section shall prevent an owner from further restricting the number of or prohibiting dogs on a premises.

§ 124-22. Designated dog parks.

[Added 8-6-2009 by Ord. No. 4]

The following are hereby designated as dog park areas:

Beman Park

Kinloch Park

§ 124-23. Enforcement of dog park rules; posting of rules

[Added 8-6-2009 by Ord. No. 4]

A. Article 7 of the Agriculture and Markets Law, all those provisions set forth in the Code of the City of Troy applicable to dogs and their owners and those rules and regulations for dog parks established by the Department of Parks and Recreation shall be enforced by the City of Troy's Animal Control Officer and the Troy City Police Department.

B. A sign entitled "Dog Park Rules," which sets forth those rules and regulations established by the Department of Parks and Recreation, shall be placed in a conspicuous place near the entrance of the dog park.

Plattsburgh City Court

24 US Oval

Plattsburgh, NY 12901

"WITHOUT PREJUDICE"

April 3rd, 2013

Dear Judge Rogers:

On Sunday, March 17 at about 1:30 PM, I was walking my small Pekingese down my driveway at 17 Couch Street. I heard the door open across the street at 18 Couch Street and saw several dogs run out of the house. Typically, their 3 dogs run around the house with the owner chasing after them. I continued east on Couch Street ignoring their dogs.

Next thing I know a white female Pit bull was attacking my Pekingese, "Mugs". This pit bull had my Pekinese by the throat. I immediately dropped to the ground in the middle of Couch Street on my knees to try pry this attack dog off of my little dog. I didn't know what to do, because this pit bull's jaws were around my little Pekinese's neck and I was worried that he would run off with my dog and kill him. A tenant from 18 Couch Street was on top of the pit bull also trying to get her off without any success. Their other 3 or 4 dogs were circling around sniffing and barking at us as the attack went on. After 2 or 3 minutes the pit bull let go and I ran to my house and met my wife in the driveway. We then went into our house and called the city police, while my wife tended to our dogs wounds and tried to get a hold of the veterinarian. Since this incident occurred on Sunday afternoon the Vet had to be called into the office to handle the emergency of our dog being attacked.

City Police officer Kiroy responded to my call, and I told her what had happened. Officer Kiroy observed the physical injuries brought on by this dog attack when she responded to my call into the Police Dept. Please see the attached report from our Vet dated 3/17/2013 afternoon from Vet Firda from Palmer's Veterinary, which states that our little 10-year old Pekinese suffered severe contusions and puncture wounds to his head, neck and ear. In fact, this pit bull had locked his jaws and clamped down on our dog's neck, thereby causing a "large subcutaneous pocket connecting these wounds." The vet stated that such an attack could have resulted in our dog being killed had our neighbor not intervened. Officer Kiroy also observed the injuries that this pit bull inflicted onto me resulting in my fingers and knuckles getting chewed up by the pit bull. I had several cuts on my fingers and they were bleeding. My jeans were also torn at the knee and my left knee was cut and bleeding. My dog defecated during the attack and my knee and open wound were subject to this matter.

After Officer Kiroy went across the street to interview the tenants of 18 Couch Street, Our neighbor Bob Patrick came by our house and told us that he heard me screaming during the commotion and attack. Mr. Patrick told me that he came onto the scene of the pit bull attacking our little dog and punched the pit bull in the ribs causing her to let go of my dog.

I never saw the attack coming. I have never spoken with the owners of these dogs or has my dog had any encounters with their dogs previously. Their dogs often are let out of the house without any leash and run around loose. They usually merely open up their front door which faces Couch Street and let their dogs run out and defecate on the front and side yard of 18 Couch Street, which is covered with their dogs excrement.

Officer Kiroy said that she had to prepare the complaint and contacted me later that week to tell me to come into the station to give my statement and sign the complaint. I went to the police station to sign a report of "dog not under control of owner". I was not given a copy of this report. I then filed for FOIL request. I am in receipt of the report. I assumed that this incident would have been considered a "dangerous" dog attack, because neither my dog nor I gave any reason to make this pit bull feel threatened. Instead after reading the report I have discovered that the police feel that this incident didn't warrant adhering to the NYS law under

NY AGRI & MKTS § 123, 123-a: This New York statute provides that statutory penalties for dog bites and the process for declaring a dog "dangerous." Definition of "dangerous" is described below under NY law 17-342.

N.Y. ADC. LAW § 17-342 : NY Code - Section 17-342: Definitions *Dangerous dog" means any dog that when unprovoked, approaches, or menaces any person in a dangerous or terrorizing manner, or in an apparent attitude of attack, upon the streets, sidewalks, or any public grounds or places; or (2) any dog with a known propensity, tendency or disposition to attack when unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or (3) any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or (4) any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.*

Under the suggestion of the City police and in accordance with this statute and since I was involved and witnessed this attack, I plead and insist that this incident be **considered an unprovoked/aggressive dog attack, and the police report be corrected to reflect the fact that this was an *unprovoked attack*. This was not a mild encounter. My dog and I were heading away from their dogs. My dog received severe injuries, as well I was injured. I consider their pit bull to be very aggressive, dangerous and a threat. As well the owners are unable to control it, and let their dogs run loose.**

NYS statutory law 121, 123 Ag & Mrkt is very clear in the case of an attack such as this, whereby an animal or human is injured without provocation, that the attacking animal needs to be isolated, muzzled and contained. And the owner of the animal must pay all City and NYS fines and costs incurred by the owner of the injured animal.

This is the second attack by a pit bull on our street in Plattsburgh, NY in the past three years. As well it needs to be made clear to this court that the tenants at 18 Couch Street continue to ignore the Plattsburgh City ordinance requiring dog owners to have their dogs on a leash and seem to even ignore the advice of Officer Kiroy. In fact, On March 28th, 2013, only 10 days after the attack to our dog and myself, my wife witnessed another attack by the dogs running loose from 18 Couch Street, which I believe is to come in front of you on April 11th, 2013, which is on the same day as the pit bull attack on March 17th, 2013.

I have witnessed the pit bull being kept at 18 Couch Street on several occasions.

Owner of the pit bull Daniel Dapo 5032 S Catherine Street.

I understand that Mr. Dapo is to appear at City Court to answer to a complaint of unleashed dog without any mention of the sever attack of March 17 2013.

My wife spoke to Officer Kiroy and her supervisor on March 29 to discover that they have misinterpreted the sequence and severity of events.

I am now in receipt of the report of the March 17th, 2013 incident. I wish to make it clear to the court that there is NO way that my dog could have caused any injury to the pit bull "Dixie." Pekinese dogs are bred to be domicile and have tiny teeth. In fact, our dog is missing 2 of his front teeth.

In reading Officer Kiroy's report, the Officer asked pit bull owner, Dapo, if his dog was injured and he stated "no." "Dapo said that his dog had a small puncture wound on her left paw." It is possible that any of the 3 or 4 dogs living at 18 Couch Street may have bitten the Pit bull."

The Pit bull's jaw was clamped down on my dog's neck and ear. Since my dog's head was inside the mouth of the pit bull during the entire incident there is no way that my dog could have inflicted any wound on this attack dog, let alone fight back to save his own life!

"Mugs," our little Pekinese was rendered helpless and screeching for his life, while I tried to save our little defenseless dog. The pit bull's grip was unrelenting and even I was unable to pry this attack dog off our helpless little dog.

I believe there have been false statements presented by the residents of 18 Couch Street and I wish the Judge to reconsider this incident as an aggressive and potentially dangerous dog attack. I beg the court to consider this a means to prevent any future attacks from taking place in our City. I would ask that court to impose a fine of \$250.00 on Dapo for dog out of the control of owner plus an additional \$500.00 minimum fine in accordance to NYS statute pertaining to "dangerous dogs." This attack was unprovoked and without cause and the dog owner nor anyone else who knew the dog could contain, control or get her off our little dog. In addition, I have enclosed a copy of our veterinary bill of \$101.08, which we had to pay out of pocket to care for our dog as a result of this vicious attack.

It is hoped that there will never be another attack, but in the event that another incident is witnessed and/or reported causing ANY type of threat or physical harm or injury to ANY human and/or animal that this court adhere to the guidelines established by NYS statute of law 123 regarding physical and/or serious injury to any animal or human. Meaning that ANY unprovoked attack should come in front of this court even though the police may not classify it as a “severe injury.” City residents shouldn’t have to worry about the safety of themselves or their pets while outside.

According to the non-profit organization, aspca: “The pit bull’s ancestors hail from England and were brought to North America by English immigrants. These descendants were bred from the bulldog, which some breed historians believe originally served as a “gripping dog” for hunters of large game. Later, bulldogs were likely used as butcher’s dogs and helped control large livestock. Eventually, these dogs were bred to participate in an inhumane blood sport called “baiting.” Spectators found it highly entertaining to watch bulldogs pitted against bulls, bears and other large animals. During these violent events, one or more dogs were expected to attack another animal, biting it around the face and head. The dogs usually maintained their grip until the animal became exhausted from fighting and loss of blood. Pit bulls were genetically selected for their fighting ability.”

I do not believe that this dog owner is responsible and can be entrusted to properly control this strong aggressive dog named “Dixie” or any dog. I therefore ask the court to have this dog removed from city limits and/or euthanized. Furthermore, that Daniel Dapo NOT be permitted to have any other dog in the City of Plattsburgh! And, that the tenants at 18 Couch Street be ordered to keep all dogs visiting or owned by them on a leash and their inside door to their apartment closed at all times to prevent any future incidents from occurring.

Respectfully,

Andrew Golt

17 Couch Street

Plattsburgh, NY

PEOPLE v. JORNOV

**The PEOPLE of the State of New York, Plaintiff-Respondent, v. Laurie JORNOV,
Defendant-Appellant. Philip Mueller, Complainant-Respondent.**

– July 02, 2009

PRESENT: HURLBUTT, J.P., SMITH, CENTRA, PINE, AND GORSKI, JJ.

David Bernheim, Croton on Hudson, for Defendant-Appellant. Philip Mueller, Schenectady, Complainant-Respondent pro se.

I

Defendant appeals from an order affirming the judgment (improperly denominated decision) of City Court directing the euthanization of her two dogs. We are constrained to agree with defendant that County Court erred in affirming the judgment, and we therefore conclude that the order should be modified by vacating that directive, and the matter should be remitted to City Court for further proceedings pursuant to Agriculture and Markets Law § 121(2).

II

On February 17, 2008, Philip Mueller was walking his German Shepard dog, Maggie, when two pit bull-terrier mixed breed dogs owned by defendant attacked Maggie and injured Mueller as well. According to the testimony of Mueller at the subsequent hearing before City Court, the two dogs, who were neither leashed nor under the control of any person, ran toward them and proceeded to attack Maggie in tandem. One of the dogs would bite Maggie, latching onto her hindquarters, and when Mueller was able to free Maggie from that dog, the other dog would circle around and latch onto her. During the struggle, Mueller's leg was bitten, and Mueller also lost his footing on the icy ground and fell. He eventually managed to enter his vehicle with Maggie, and it was only then that the dogs stopped the attack and wandered away. Mueller reported the incident to the police, and they prepared a dangerous dog complaint concerning defendant's dogs.

At the hearing before City Court, the People presented evidence of a prior incident on June 19, 2007 during which one of defendant's dogs, which was on a leash, barked and lunged at a person leaving his place of employment. The following day, defendant's dogs mauled a kitten to death in a parking lot while defendant and her grandson were taking the dogs for a walk. The People also presented testimony that, on September 16, 2006, one of defendant's dogs ran from defendant's yard and attacked a neighbor's dog, as well as evidence that, just a few weeks before the incident with Mueller, defendant's dogs were seen running loose around the area where Mueller was attacked. Although those prior incidents were reported to the police, the first dangerous dog proceeding against defendant under Agriculture and Markets Law § 121 was not commenced until after the incident involving Mueller.

At the conclusion of the hearing, City Court determined that defendant's dogs were dangerous dogs and directed that they be euthanized. County Court affirmed the judgment of City Court, and we now conclude that the order on appeal should be modified.

III

Effective December 15, 2004, Agriculture and Markets Law § 121 and related statutes were extensively amended. First, the definition of a “[d]angerous dog” was expanded to include:

“any dog which (i) without justification attacks a person, companion animal as defined in [section 350(5)] of this chapter, farm animal as defined in [section 350(4)] of this chapter or domestic animal as defined in subdivision seven of this section and causes physical injury or death, or (ii) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion animals, farm animals or domestic animals or (iii) without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death” (§ 108[24]).

Unlike the prior version of the statute, the new version allows a determination that a dog is dangerous when it attacks a “companion animal,” which includes in its definition “any dog or cat” (Agriculture and Markets Law § 350[5]). We conclude on the record before us that there is clear and convincing evidence that defendant's dogs were dangerous (see § 121[2]). The dogs, without justification, attacked Mueller's dog, a companion animal, as well as Mueller, causing them physical injury (see § 108[24][a][i]). The dogs also behaved in a manner that a reasonable person would believe posed a serious and imminent threat of serious physical injury or death to Mueller and his dog (see § 108[24][a][ii]). Mueller testified that the dogs continued their attack notwithstanding the fact that he was hitting their heads with the plastic housing of his dog's leash and yelling at them. In addition, Mueller testified that the dogs attempted to climb into Mueller's vehicle to continue their attack. The dogs did not leave the area until Mueller was able to shut the door of his vehicle.

Once a judge or justice determines that a dog is dangerous by clear and convincing evidence then, pursuant to the new version of the statute,

“the judge or justice shall . order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

“(a) evaluation of the dog by a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field and completion of training or other treatment as deemed appropriate by such expert. The owner of the dog shall be responsible for all costs associated with evaluations and training ordered under this section;

“(b) secure, humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to: (1) prevent escape of the dog, (2) protect the public from unauthorized contact with the dog, and (3) to protect the dog

from the elements pursuant to section [353-b] of this chapter. Such confinement shall not include lengthy periods of tying or chaining;

“(c) restraint of the dog on a leash by an adult of at least twenty-one years of age whenever the dog is on public premises;

“(d) muzzling the dog whenever it is on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or

“(e) maintenance of a liability insurance policy in an amount determined by the court, but in no event in excess of one hundred thousand dollars for personal injury or death resulting from an attack by such dangerous dog” (Agriculture and Markets Law § 121[2]).

The judge or justice may direct humane euthanasia or permanent confinement of the dog only if one of the following aggravating circumstances is established:

“(a) the dog, without justification, attacked a person causing serious physical injury or death; or

“(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

“(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a ‘dangerous dog’ finding pursuant to the provisions of this section” (Agriculture and Markets Law § 121[3]).

Thus, unlike the prior version of the statute, a judge or justice may not automatically direct humane euthanasia or permanent confinement of a dangerous dog (see Agriculture and Markets Law former § 121[4]). The various memoranda in support of the new legislation indicate that the new version of the statute provides judges and justices with greater leeway in determining the proper remedy beyond the previously mandated remedy of humane euthanasia or permanent confinement (see N.Y. Assembly Mem. in Support, Bill Jacket, L. 2004, ch. 392, § 3, 2004 McKinney's Session Laws of N.Y., at 1893-1894). While we agree that the new version of the statute provides a court with options other than humane euthanasia and permanent confinement upon determining that a dog is dangerous, in our view the new version actually diminishes the discretion of a court in directing humane euthanasia or permanent confinement, even when it is patently clear that either would be appropriate.

IV

An examination of the statute reveals that none of the aggravating circumstances is present here in order to direct the euthanization of the dogs. The first aggravating circumstance is that the dog unjustifiably attacked a person, causing “serious physical injury or death” (Agriculture and Markets Law § 121[3][a]). Serious physical injury is defined in Agriculture and Markets Law § 108(29) as “physical injury which creates a substantial risk of death, or which causes

death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ,” and we note that the definition of serious physical injury in Penal Law § 10.00(10) is essentially the same. Based on the evidence before City Court, we conclude that the injuries sustained by Mueller do not meet that threshold. Mueller testified that he sustained a bite wound to his right leg, for which he was prescribed antibiotics, and he sustained a torn hamstring, for which he was instructed to take ibuprofen and attend physical therapy for six to eight weeks. Although Mueller was still in physical therapy at the time of the hearing, the hearing was conducted just a few weeks after the incident. There was no evidence that Mueller would sustain “protracted impairment of health” as a result of the incident (Agriculture and Markets Law § 108[29]; see *People v. Horton*, 9 A.D.3d 503, 504-505, 780 N.Y.S.2d 654, lv. denied 3 N.Y.3d 707, 785 N.Y.S.2d 35, 818 N.E.2d 677; *People v. Phillip*, 279 A.D.2d 802, 803-804, 718 N.Y.S.2d 727, lv. denied 96 N.Y.2d 905, 730 N.Y.S.2d 803, 756 N.E.2d 91).

The second aggravating circumstance is that “the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death” (Agriculture and Markets Law § 121[3][b]). That aggravating circumstance also was not established at the hearing. Although a witness testified that one of defendant's dogs barked and lunged in his direction while defendant was walking the dog, that witness did not sustain any injury as a result of that incident, let alone a serious physical injury.

Finally, the third aggravating circumstance is that the dog unjustifiably causes “serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a ‘dangerous dog’ finding pursuant to the provisions of [Agriculture and Markets Law § 121]” (§ 121[3][c]). There is no question that the injury sustained by Mueller's dog constituted a serious physical injury. The evidence established that the bite wounds to the dog came close to major veins, which likely would have caused the dog's death if they had been severed. Moreover, there was a substantial risk of death to Mueller's dog based on the potential infection of the numerous bite wounds. Nevertheless, although the evidence further established that, less than a year prior to this incident, defendant's dogs had killed a cat, there was never a dangerous dog finding in connection with that incident. Under the new version of the statute, such a finding is required under the third and last aggravating circumstance. The statute provides that, when a person witnesses an attack or threatened attack upon a person or companion animal, the person may make a complaint to a dog control officer or police officer of the appropriate municipality (see § 121[1]). The statute further provides that the officer shall inform the complainant of his or her right to commence a dangerous dog proceeding “and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself [or herself]” (§ 121[1]). Here, however, the police never commenced a dangerous dog proceeding in connection with either the incident involving the kitten or any of the other prior incidents involving defendant's dogs.

Because none of the three aggravating circumstances exists here, City Court lacked the authority to direct humane euthanasia, despite its strong belief that euthanization was the appropriate remedy. In our view, the new version of the statute is flawed because it deprives courts of the discretion to determine that humane euthanasia is appropriate in the absence of an aggravating

circumstance, even in the face of evidence that defendant's dogs caused serious physical injury to another dog and physical injury to a person and that the dogs had a prior history of attacking another dog, killing a cat, and threatening another person. In addition, the evidence established that defendant failed to grasp the severity of the harm caused by her dogs. She testified that her dogs thought the kitten was a toy, thereby indicating her belief that their behavior was reasonable or justified, and she further testified that the incident with Mueller and his dog was simply a dog fight. Defendant repeatedly minimized the behavior of her dogs or attempted to place the blame for their behavior on others, such as blaming Mueller for keeping his dog restrained while her dogs were attacking it and for hitting her dogs while attempting to stop the attack. Defendant also noted that her housemate had taken the dogs out, unleashed, at the time of the instant attack, and she thus did not believe that her dogs should be euthanized because it was not her fault that they were not on a leash at the time of the attack. There was evidence presented at the hearing, however, that defendant's housemate had taken the dogs with him on prior occasions and had allowed them to roam free. In any event, the evidence at the hearing established that, even when defendant had the dogs restrained, she was unable to stop them from mauling the kitten. Although there clearly are aggravating circumstances here, they undeniably are not those listed in the statute. We thus would deem it advisable to amend the statute to afford a judge or justice the discretion to direct the humane euthanasia of a dangerous dog when there are aggravating circumstances deemed by the judge or justice to warrant such action.

V

The remaining contentions of defendant do not require a further modification. The People established by clear and convincing evidence that the dogs that attacked Mueller and his dog were the dogs owned by defendant, as defendant conceded in her testimony. Defendant never objected to the receipt of various documents in evidence and never requested an adjournment to review those documents or to subpoena witnesses, and thus her contentions with respect thereto are not preserved for our review. We reject the further contention of defendant that City Court abused its discretion in refusing to assign counsel to represent her. This action is civil in nature (see *Matter of Foote*, 129 Misc. 2d 4, 221 N.Y.S. 302), and defendant faced a "civil penalty" of up to \$1,500 (§ 121[7]). Defendant's dogs had not previously been determined to be dangerous, and defendant thus was not facing a misdemeanor charge (see § 121[8]). We note that the requirement of assigned counsel in criminal actions is based on the underlying principle "that when the State or Government proceeds against the individual with risk of loss of liberty or grievous forfeiture, the right to counsel and due process of law carries with it the provision of counsel if the individual charged is unable to provide it for himself [or herself]" (*Matter of Smiley*, 36 N.Y.2d 433, 437, 369 N.Y.S.2d 87, 330 N.E.2d 53). However, the general rule in civil actions is that "there is no absolute right to assigned counsel; whether in a particular case counsel shall be assigned lies instead in the discretion of the court" (*Planck v. County of Schenectady*, 51 A.D.3d 1283, 1283, 858 N.Y.S.2d 824, quoting *Smiley*, 36 N.Y.2d at 438, 369 N.Y.S.2d 87, 330 N.E.2d 53). Here, the court did not abuse its discretion in denying defendant's request for assigned counsel inasmuch as defendant faced only civil penalties and no "grievous forfeiture" (*Smiley*, 36 N.Y.2d at 437, 369 N.Y.S.2d 87, 330 N.E.2d 53). Although "an adverse determination could form the basis for potential criminal charges . . . such effects are contingent possibilities, too remote and speculative to require counsel at this stage" (*Matter of Miller v. Gordon*, 58 A.D.2d 1027, 1027, 397 N.Y.S.2d 500). "The danger of incarceration

would arise only if [defendant negligently permitted her dogs thereafter to bite or kill a person], not as a direct result of any determination in [this] proceeding” (id.).

We have considered defendant's remaining contentions and conclude that they are without merit.

VI

Accordingly, we conclude that the order should be modified by vacating the directive of humane euthanasia, and the matter should be remitted to City Court for further proceedings pursuant to Agriculture and Markets Law § 121(2) (see generally *Cuozzo v. Loccisano*, 15 Misc.3d 16, 17, 832 N.Y.S.2d 744).

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the directive of humane euthanasia and as modified the order is affirmed, and the matter is remitted to Little Falls City Court for further proceedings pursuant to Agriculture and Markets Law § 121(2).

N.Y. ADC. LAW § 17-342 : NY Code - Section 17-342:

Definitions

Search N.Y. ADC. LAW § 17-342 : NY Code - Section 17-342: Definitions

- Search by Keyword or Citation . .

Whenever used in this subchapter, the following terms shall be defined as follows:

a. "Person" means any individual, partnership, firm, joint stock company, corporation or employee thereof, or other legal entity, unless otherwise stated.

b. "Owner" means any person possessing, harboring, keeping, having an interest in, or having control or custody of a dog.

c. "Dangerous dog" means (1) any dog that when unprovoked, approaches, or menaces any person in a dangerous or terrorizing manner, or in an apparent attitude of attack, upon the streets, sidewalks, or any public grounds or places; or (2) any dog with a known propensity, tendency or disposition to attack when unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or (3) any dog which bites, inflicts injury, assaults or otherwise attacks a human being or domestic animal without provocation on public or private property; or (4) any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting.

d. "Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring either multiple stitches or cosmetic surgery.

e. "Unprovoked" means that the dog was not hit, kicked, taunted or struck by a person with any object or part of a person's body nor was any part of the dog's body pulled, pinched or squeezed by a person.